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12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 GERALD ARMSTRONG,
15 Plaintiff,

CASE NO. CV-N-97-00670 ECR (RAM)

16 vs.

**REPLY MEMORANDUM OF POINTS
AND AUTHORITIES OF DEFENDANT
CHURCH OF SCIENTOLOGY
INTERNATIONAL IN SUPPORT OF
MOTION TO DISMISS COMPLAINT**

17 DAVID MISCAVIGE and CATHY
18 NORMAN, individuals; CHURCH OF
SCIENTOLOGY INTERNATIONAL, a
19 California corporation; the RELIGIOUS
TECHNOLOGY CENTER, a California
20 corporation; the SEA ORGANIZATION,
a California based unincorporated entity;
and the CHURCH OF SCIENTOLOGY
21 OF TEXAS, a Texas corporation,

22 Defendants.
23 _____/

24 **PRELIMINARY STATEMENT**

25 Defendant Church of Scientology International ("CSI"), joined by certain other defendants, moved
26 to dismiss plaintiff Gerald Armstrong's ("Armstrong") complaint on the grounds that: (1) there is no
27 diversity between the parties and therefore this Court is without subject matter jurisdiction; (2) venue is
28 improper; (3) this Court is without personal jurisdiction over the defendants; and (4) this Court should not

1 permit Armstrong, a fugitive from justice in California, to use this forum to circumvent the courts of
2 California.¹ In his belated opposition papers, Armstrong has failed to meet his burden to demonstrate that
3 the Complaint should not be dismissed under each of these four independent grounds for dismissal.

4 ARGUMENT

5 I. ARMSTRONG FAILED TO ESTABLISH THAT HE WAS A CITIZEN OF NEVADA AS 6 OF THE DATE HE FILED THE COMPLAINT, AND THEREFORE THIS COURT LACKS SUBJECT MATTER JURISDICTION

7 In its opening brief, CSI demonstrated that Armstrong completely failed to plead Nevada *citizenship*,
8 a requisite for diversity jurisdiction, and instead pleaded in conclusory fashion that he was "a resident of
9 Nevada at the time of filing this complaint" (Compl. ¶ 5.) This pleading was insufficient as a matter of law
10 and therefore the Complaint should be dismissed.

11 In opposing CSI's motion, Armstrong argues that his allegation and claims of "residence" are
12 sufficient for two reasons: (1) the general rule of notice pleading in federal courts; and (2) a decision of the
13 Nevada Supreme Court in *Aldabe v. Aldabe*, 84 Nev. 392, 441 P. 2d 691 (1968), which held that the
14 requirement of "residence" for divorce jurisdiction in Nevada requires domicile in Nevada.

15 Both arguments must be rejected, for much the same reasons. The general notice pleading
16 requirement for federal claims under Federal Rule of Civil Procedure 4 simply does not permit substitution
17 of an allegation of mere residence for the specific allegation of domicile required under 28 U.S.C. § 1332.
18 Instead, case after case consistently holds that it is necessary to plead citizenship, not residence, in order
19 to invoke the diversity jurisdiction of a federal court. *Wolfe v. Hartford Life & Annuity Ins. Co.*, 148 U.S.
20 389, 389, 13 S.Ct. 602, 603 (1893) (averment of diverse "residence" is not sufficient to confer federal
21 jurisdiction; diverse citizenship must either be averred or appear from other parts of the record). *See also*
22 *Realty Holding Co. v. Donaldson*, 268 U.S. 398, 399, 45 S.Ct. 521, 521 (1925) (allegation that defendant
23 is "resident" of Michigan insufficient allegation of diverse citizenship to give federal court jurisdiction);
24 *Leveraged Leasing Admin. v. PacifiCorp Capital*, 87 F.3d 44, 47 (2nd Cir. 1996) ("[i]t is firmly established
25 that diversity of citizenship 'should be distinctly and positively averred in the pleadings, . . . '[citing *Wolfe*].
26 It is also clear that a statement of the parties' residence is insufficient to establish their citizenship").

27
28 ¹Although Armstrong's complaint also names David Miscavige and the Sea Organization as defendants, to the best
of defendants' knowledge and information, they have not been served with the Summons and Complaint in this action.

1 Similarly unavailing is Armstrong's reliance on the state court's decision in *Aldabe*. *Aldabe* merely
2 strictly construed the term "residence" under Nevada's personal divorce jurisdiction statute as requiring
3 domicile. It cannot and does not stand for the *reverse* proposition that citizenship or domicile under 28
4 U.S.C. § 1332 should be *loosely* construed to mean mere residence, let alone that diverse citizenship can
5 be properly be made out by allegations of residence. Even if the Nevada Supreme Court presumed to decide
6 such a question, which it clearly did not, it has no authority to determine either pleading or substantive
7 jurisdictional requirements under *federal* law. *Coury v. Prot*, 85 F.3d 244, 248 (5th Cir. 1996) ("Federal
8 common law, not the law of any state, determines whether a person is a citizen of a particular state for
9 purposes of diversity jurisdiction.")

10 Even if the Court were to look beyond Armstrong's inadequate pleadings, Armstrong is no more
11 successful in pointing to any facts sufficient to show that he was a domiciliary of Nevada at the time he filed
12 the complaint, as is required under the statute, or ever. The Court will recall that in its moving papers, CSI,
13 relying upon several sworn declarations by Armstrong as well upon his other writings, demonstrated that
14 Armstrong simply could not plead Nevada citizenship as of the date he filed his Complaint because he had
15 not as of that date established a Nevada domicile. Under established precedent, "To demonstrate citizenship
16 for diversity purposes a party must (a) be a citizen of the United States, and (b) be domiciled in a state of
17 the United States." *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986). Domicile requires that Armstrong
18 have "established a 'fixed habitation or abode in a particular place'" in Nevada, where he intends to remain,
19 "permanently or indefinitely." *Id.* at 749-50; *see also Abbott v. United Venture Capital*, 718 F. Supp. 823,
20 826 (D. Nev. 1988); *Safeco Ins. Co. of America v. Mirczak*, 662 F. Supp. 1155, 1157 (D. Nev. 1987).
21 Moreover, for diversity purposes, domicile is determined as of the instant the lawsuit is filed. *Lew*, 797 F.2d
22 at 750.

23 CSI proved through a declaration dated December 15, 1997, submitted by Armstrong seeking an
24 extension of time in another action, that Armstrong had not established a Nevada domicile even as of three
25 weeks after he filed the Complaint in this action on November 24, 1997. In his December declaration,
26 Armstrong stated that he "anticipated completing" his move from Canada to Nevada "within the next two
27 weeks." (Wilson Decl. Exh. G, ¶ 8.) Moreover, Armstrong conceded that he "ha[d] been staying in
28 Canada" (Wilson Decl. Exh. G, ¶ 5), and that he was in Nevada as of the date of executing the declaration,

1 “for four days in connection with” this action (Wilson Decl. Exh. G, ¶ 9). Another declaration filed by
2 Armstrong only five days earlier, on December 10, 1997, was executed by Armstrong in Chilliwack, British
3 Columbia, Canada. (Wilson Decl. Exh. K, at 32.) Upon the basis of this evidence alone, dismissal is proper
4 for lack of subject matter jurisdiction.

5 Subsequent statements by Armstrong further demonstrate that Armstrong had not established a
6 Nevada domicile as of November 24, 1997. On January 26, 1998, Armstrong filed another declaration
7 indicating that he had not yet moved from Canada to Nevada. (Wilson Decl. Exh. H, ¶ 58 and at 55.)
8 Although on April 1, 1998 Armstrong wrote in an Internet posting that he “moved [his] official residence
9 to Nevada”, he nonetheless conceded that he had not actually moved, stating that it “has not been ultimately
10 timely to move” from Canada. (Wilson Decl. Exh. I, at 1-2.)² Additionally, the declaration of Sheila M.
11 Werner establishes, at the least, that Armstrong was still in Canada in January, March, and April 1998.
12 (Werner Decl. ¶¶ 2, 3, 8, 9.)

13 It is Armstrong’s burden to prove his Nevada domicile. *Lew*, 797 F. 2d at 749. Moreover, “domicile
14 is evaluated in terms of ‘objective facts,’ and [] ‘statements of intent are entitled to little weight when in
15 conflict with facts.’” *Id.* at 750. In assessing domicile, courts have looked to a variety of factors, including:

16 current residence, voting registration and voting practices, location of
17 personal and real property, location of brokerage and bank accounts, location
18 of spouse and family, membership in unions and other organizations, place
of employment or business, driver’s license and automobile registration, and
payment of taxes.

19 *Id.* (citations omitted).

20 Although Armstrong repeatedly asserts in conclusory fashion that he is a resident of Nevada, he cites
21 no facts to support his contention. Thus, in paragraph 9 of his Declaration of May 6, 1998, Armstrong
22 asserts, “I have considered myself, and have legally been, a resident of Nevada since November, 1997.”
23 To support this conclusory contention, Armstrong notes that he has had “a post office box in Nevada since
24 November 21, 1997”. A post office box, however, is not evidence of residence. Indeed, if anything, it
25 indicates that Armstrong does not have a residence in Nevada and is therefore relegated to using a post
26 office box. This inference is strengthened by Armstrong’s failure to identify any residence at any particular
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28 ²Given that Armstrong is a fugitive from justice, as discussed *infra*, this Court will appreciate that the timing of
Armstrong’s intended relocation from Canada has been frustrated by the logistics and the planning necessary for him to
return to the United States and pass through United States Immigration surreptitiously so as to avoid immediate arrest.

1 location or address in Nevada. (A "'fixed habitation or abode in a particular place," *Lew*, 797 F.2d at 749.)

2 Armstrong asserts, "I have a Nevada driver's license", yet he does not attach a copy of the license
3 as an exhibit and he does not identify the date of the license, to demonstrate that he had the license prior to
4 filing his Complaint in this action. Indeed, CSI has discovered, through public record investigation, that
5 Armstrong's Nevada driving license is dated December 19, 1997, a month *after* he filed this action.
6 Declaration of Janet L. Holsclaw, attached hereto as **Exhibit "A"**, ¶ 3. Thus, the license is evidence not
7 only that Armstrong was *not* a Nevada domiciliary in November, 1997, but indeed that he obtained the
8 license after the fact in an effort to support his bogus claim.³ Further evidence of this is the fact that
9 Armstrong is the registered licensed owner of a 1987 Toyota, registered in California with a listed address
10 of 715 Sir Francis Drake Boulevard, San Anselmo, California 94960. *Id.*, ¶ 2. Likewise, Armstrong rented
11 a car from Budget Rental Car in Reno, Nevada on December 27, 1997, and gave as his address, 715 Sir
12 Francis Drake Boulevard, San Anselmo, California 94960. *Id.*, ¶ 5. In summary, the "automobile" evidence
13 demonstrates that Armstrong, to be put it mildly, is not being forthright with the Court in asserting his
14 "residence" in Nevada.

15 Armstrong also claims, "I have work in Nevada, am actively engaged in that work, and keep my
16 personal property in Nevada." Yet, Armstrong does not identify the nature of his "work" in Nevada; he does
17 not characterize it as employment, either as an employee or self-employed; and he does not claim to derive
18 any income in Nevada from that work. Indeed, elsewhere in his submission Armstrong acknowledges that
19 his "work" is in fact pursuing this lawsuit or other actions against defendants. (Armstrong Decl. ¶ 43, at
20 26) ("I am working with Mr. Abbott to correct these wrongs"). Moreover, although Armstrong claims that
21 he has personal property in Nevada, he does not identify that property or where it is located, and he
22 conspicuously fails to claim that this property is located at his "residence," raising the inference that he has
23 no residence or fixed place of abode and that the property has simply been placed in storage in Nevada.

24 Although it is plainly his burden to demonstrate that his domicile is Nevada, Armstrong made no
25 effort to provide evidence of domicile in accordance with the considerations set forth by the Ninth Circuit
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27
28 ³A driver's license is but one of many factors to be considered in determining domicile. *Williams v. Versto, Inc.*,
1996 WL 745338, *2 (N.D.Ill. Dec. 27, 1996) ("While the evidence of [Plaintiff's] driver's license is relevant to the
determination of domicile, it is not persuasive in light of the other evidence.") Under the circumstances here, Armstrong's
driver's licence is evidence that he was not a citizen of Nevada, at least at the time he filed this lawsuit.

1 in *Lew*. Thus, Armstrong does not identify a residence in Nevada or even assert that he lives at any
2 particular place in Nevada. He does not claim to have a telephone number in Nevada and does not claim
3 to receive any utility service in Nevada. He does not claim to have registered to vote, or to have voted in
4 Nevada. He does not claim any real property in Nevada, whether owned or rented, and he does not claim
5 to have any brokerage or bank accounts in Nevada. Moreover, he does not state where his wife resides, does
6 not identify any actual employment in Nevada, and does not claim to have ever received income or paid
7 taxes in Nevada.

8 Because Armstrong has failed to meet his burden to demonstrate a Nevada domicile, the
9 presumption is that his prior domicile of California continues. *Lew*, 797 F.2d at 751 (presumption is in
10 favor of an established domicile as against a newly acquired one). And, critically, this presumption is
11 reinforced by Armstrong's own December 1997 representation of a California residence to a car rental
12 company. See Declaration of Janet L. Holsclaw, ¶ 5. As such, there is not complete diversity between the
13 parties and this case must be dismissed for lack of subject matter jurisdiction.

14 **II. VENUE IS NOT PROPER IN NEVADA**

15 Armstrong does not seriously contest defendants' argument, set forth in CSI's Brief at 9, that venue
16 is not proper under 28 U.S.C. § 1391(a). Armstrong simply asserts that venue is proper, but does not
17 identify under which subsection of § 1391(a) he is asserting venue. (Plaintiff's Opposition at 13.) Venue
18 is not proper in Nevada under any of the three subsections of the statute: § 1391(a)(1) is not applicable here
19 as it applies only where all of the defendants reside in the same state; § 1391(a)(2) would not permit venue
20 in Nevada because none of the events giving rise to the claim here occurred in Nevada and no property that
21 is the subject of this action is located in Nevada; and § 1391(a)(3) only applies if there is no other
22 jurisdiction in which venue is proper, and under § 1391(a)(2) venue could be proper in Texas, Alabama, or
23 California, where some of the acts or omissions are alleged to have occurred.

24 **III. THIS COURT LACKS PERSONAL JURISDICTION OVER DEFENDANTS**

25 In its motion to dismiss, CSI demonstrated that it has no contacts with the state of Nevada and that
26 this Court may not assert personal jurisdiction over it. In his response, Armstrong failed to provide evidence
27 of contacts that are a sufficient basis upon which to premise personal jurisdiction over CSI. It is
28 Armstrong's burden to demonstrate that personal jurisdiction exists. *Scott v. Breeland*, 792 F.2d 925, 927

(9th Cir. 1986). Moreover, “When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff is ‘obligated to come forward with facts, by affidavit or otherwise, supporting jurisdiction.’” *Id.* Armstrong has failed to meet his burden.

Jurisdiction over a party may be “general” or “specific.” General jurisdiction exists over a defendant where the defendant’s activities in the forum state are “continuous and systematic” or “substantial.” *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 270 (9th Cir. 1995); *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1330-31 (9th Cir. 1984); *Data Disc, Inc. v. Systems Tech. Assoc., Inc.*, 557 F.2d 1280, 1287 (9th Cir. 1977). Moreover, the level of contact with the forum state necessary to establish general jurisdiction is quite high. *See Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 413 (1984). Where a defendant’s activities in a forum state are insufficient to vest the court with general jurisdiction, specific jurisdiction nonetheless may permit an action to proceed where (1) the defendant has done some act whereby the defendant purposefully avails itself of the privilege of conducting activities in the forum; (2) the claim arises out of the defendant’s forum-related activities; and (3) exercise of jurisdiction must be reasonable. *Omeluk*, 52 F.3d at 270; *Data Disc*, 557 F.2d at 1287.

Here, Armstrong offers only the bald conclusory assertion that this Court has general jurisdiction over CSI. Because the claims for which Armstrong seeks relief concern the mailing of a letter from Texas to Alabama regarding a California resident and therefore do not in any way implicate Nevada or demonstrate defendants’ having purposefully availed themselves of the privileges of conducting activities in Nevada, specific jurisdiction plainly does not apply here.

Because none of the defendants’ activities in Nevada are “substantial” or “continuous and systematic”, this Court lacks general jurisdiction over CSI as well. CSI is a California corporation. (Rinder Decl. ¶ 2.) CSI does not have offices or subsidiaries in Nevada, is not qualified to do business in Nevada, does not own real or personal property in Nevada, does not have bank accounts in Nevada and does not have employees in Nevada. (*Id.* ¶ 3-4.) Because CSI’s activities in Nevada are neither substantial nor continuous and systematic, — indeed they are non-existent — this Court may not assert personal jurisdiction over it. *Omeluk*, 52 F.3d at 270.

In response, Armstrong has submitted a conclusory declaration in which he argues that CSI maintains a continuous and systematic presence through its alleged management or control of three local

1 Scientology churches in Nevada – Church of Scientology of Nevada, Church of Scientology Creative
2 Mission of Las Vegas, and Church of Scientology Mission of Las Vegas. Armstrong announces, without
3 stating the basis for his purported knowledge or specific facts to support his conclusory statements, that CSI,
4 *inter alia*, manages and controls the activities of the local churches; that it dictates the officers and
5 employees of the local churches; and that it places an agent of something called the Office of Special Affairs
6 in the local churches, whom CSI controls. From this, Armstrong argues that CSI does business in Nevada
7 directly, and that the local churches are its alter ego.

8 As a preliminary matter, Armstrong is not competent to make the allegations he makes. Armstrong
9 has not been a staff member or parishioner of any Church of Scientology since December 12, 1981, when
10 he resigned his staff position with the Church of Scientology of California and terminated his relationship
11 with the Church. Moreover, Mr. Armstrong was never an officer, director or trustee of any Scientology
12 church, and never held a management position in any church.

13 Accordingly, Mr. Armstrong has no personal knowledge of the management structure or activities
14 of Scientology churches today. Indeed, CSI was not even incorporated until November 20, 1981, and did
15 not begin to function until after Armstrong left the Church. RTC was not incorporated until 1982. Since
16 that time, and as a result of the creation of CSI and RTC, as well as other reorganizations in Scientology's
17 corporate structure, there have been vast changes in the administration of Scientology churches. For
18 example, Mr. Armstrong alleges that CSI frequently sends "missions" to confer with local churches. Aside
19 from the fact that Armstrong has no basis for making any allegations as to what CSI does or does not do,
20 his statement simply is not true; such "missions" are, at the most, a rare occurrence. CSI has sent only one
21 "mission" to meet with officials of the Church of Scientology of Nevada, and that was in 1995. Local
22 churches maintain independent control of their day-to-day, corporate, and financial activities.

23 The facts are quite different from Mr. Armstrong's vague, conclusory, and hearsay inadmissible
24 allegations.⁴ As stated in the reply declaration of Michael Rinder:

- 25 1. CSI is separately incorporated, as are the local churches;
- 26 2. CSI has its own officers, directors, and employees, as do the local churches. There
- 27

28 ⁴Armstrong must carry his burden of showing personal jurisdiction by reliance on competent, admissible evidence.
McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 189 (1936).

1 is no overlap among these individuals;

2 3. CSI maintains its own bank accounts, as do the local churches. CSI manages its own
3 finances, as do the local churches. CSI exercises no control over the finances or bank accounts of the local
4 churches;

5 4. There are no personnel of the Office of Special Affairs or of CSI employed by the
6 local churches in Nevada;

7 5. The local churches are responsible for their own conduct and affairs;

8 6. CSI exercises ecclesiastical leadership over the Scientology religion, and does
9 provide guidance to local churches in applying the scriptures both technically and administratively. Such
10 guidance and leadership ordinarily is carried out in California. Nevada churches may seek or obtain
11 ecclesiastical guidance from CSI in California, by communicating with CSI in California, or by traveling
12 to California to CSI's offices. While there was a single instance in 1995 when CSI sent a "mission" to meet
13 with officials of the local Nevada church, such missions are not common or ordinary;

14 7. CSI is licensed by Religious Technology Center ("RTC") to utilize certain trademarks
15 and copyrights of the Scientology religion. CSI in turn provides sub-licenses to local Scientology churches,
16 and in certain instances individuals, to utilize such intellectual property, and CSI is responsible to insure
17 that the sub-licensees act in accordance with the licenses. Again, CSI carries out these functions from its
18 offices in California;

19 8. CSI was recognized as tax exempt by the Internal Revenue Service in 1993, following
20 a lengthy and exhaustive review of the activities and of the financial and other records of CSI and all
21 Scientology churches. The local Nevada churches are recognized as exempt by the IRS; and

22 9. In March, 1998, in response to the unlawful disclosure to the press of certain
23 documents relating to the IRS' granting of exemption in 1993, the IRS sent CSI a new letter reaffirming its
24 exempt status, "as a separate corporate entity," and acknowledging that exemption was granted following
25 an exhaustive review of CSI's activities and records.

26 This evidence shows that CSI does not engage in "continuous," "systematic," or "substantial"
27 activities in Nevada. Rather, it carries out its religious functions from its offices in California. It in no way
28 directly manages the local Nevada churches, and on only one occasion has CSI sent its own representatives

1 to Nevada to meet with officials of the Nevada church.⁵

2 These contacts are simply insufficient to support Armstrong's claim of general jurisdiction over
3 RTC. The holding in *Omeluk* is instructive. In that case, a Norwegian shipbuilder was sued in Washington
4 State for claims relating to an accident on a ship it refurbished. The evidence demonstrated that the work
5 on the ship was performed almost entirely in Norway, that the shipbuilder was located in Norway, and that
6 it did not have offices or employees in Washington. The evidence also demonstrated; however, that ten
7 percent of the electronics installation for the ship was performed in Washington State, and that employees
8 of the defendant traveled to Washington State on occasion. This evidence was found by the Ninth Circuit
9 to be insufficient to support general jurisdiction over the defendant. The Court noted that defendant's "lack
10 of a regular place of business in Washington is significant, and is not overcome by a few visits." 52 F.3d
11 at 270. Thus, minor contact with the forum state, such as the limited contacts by CSI staff with the Nevada
12 Churches, is insufficient to grant general jurisdiction over those entities. *Congoleum Corp. v. DLW*
13 *Aktiengesellschaft*, 729 F.2d 1240 (9th Cir. 1984) (defendant's activities in forum state, including
14 solicitation of orders, recommendation of sales agents, ordering of samples, promotion of defendant's
15 products through the mail and at a showroom display, and attendance at trade shows and sales meeting were
16 insufficient to grant general jurisdiction over defendant); *Bruno Wessel, Inc. v. McCourt*, 1992 U.S. Dist.
17 LEXIS 6230, *15-16 (N.D. Cal. 1992) (contracts to service machines located in California, the forum state,
18 were insufficient to confer general jurisdiction over non-resident defendant; "[defendant] has undertaken
19 no advertising in California, maintains no offices or employees here, and in fact has no presence here
20 whatsoever other than its service center contracts"). While specific jurisdiction over CSI may be proper in
21 a case where the claim arises out of the actual contact with Nevada, that is not the case here. Armstrong's
22 necessary reliance upon general jurisdiction is unavailing because of the virtually non-existent contacts by
23 CSI with Nevada.

24 Nor do the facts even begin to support an alter ego claim. The corporate form of these separate
25 entities may not be disregarded unless it can be shown that the three Nevada Churches are the agents or alter
26 egos of CSI and RTC. See, *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 419-21 and notes

27
28 ⁵CSI's role is analogous to that of the Vatican with respect to local archdioceses and parishes. Certainly the fact
that the Vatican exercises ecclesiastical authority over such local church corporations does not subject it to nationwide
general personal jurisdiction.

1 13-15 (9th Cir. 1977); *Hoag v. Sweetwater International*, 857 F. Supp. 1420, 1424 (D. Nev. 1994).
2 Armstrong has not, and cannot, show that the three Nevada entities are the agents or alter egos of defendants
3 CSI and RTC and therefore this Court lacks jurisdiction over defendants.

4 Armstrong asserts, upon information and belief, that CSI manages all "lower level" Churches of
5 Scientology around the world; that CSI trains Nevada staff (but not in Nevada); that CSI staff are in frequent
6 contact with the staffs of the Nevada Churches; and that CSI licenses individual Scientologists to open
7 Internet web sites. Yet, as the Reply Declaration of Michael Rinder demonstrates, Armstrong's assertion
8 of control by CSI is plainly not true. The three Churches in Nevada each have their own boards of directors,
9 officers, and employees and each manages its own affairs. Moreover, while the Nevada churches may
10 receive religious and spiritual guidance and assistance from CSI, this is no more so than would be the case
11 of any other religion, and is analogous to the corporate guidance parent corporations provide to their
12 affiliates or subsidiaries. Indeed, after an exhaustive review of CSI and other Scientology related entities,
13 the IRS determined that CSI was "a separate corporate entity." The IRS implicitly but necessarily rejected
14 allegations such as those made by Mr. Armstrong in this case about the genuineness and integrity of the
15 Scientology corporate structure, because it could not otherwise have recorded these entities as tax-exempt
16 religious organizations. The IRS recently reconfirmed its recognition of CSI's separate exempt status in
17 a letter of March 20, 1998. As long as the separateness of the corporate entities is respected, jurisdiction
18 over CSI because of the actions of the three Nevada churches is not proper.

19 Armstrong relies upon a decision of the Superior Court of California in the case *Wollersheim v.*
20 *Church of Scientology, et al.*, now on appeal, which held that CSI and RTC were the alter egos of the now-
21 inactive Church of Scientology of California, for his contention that "by analogy" the three Nevada
22 Churches are the alter egos of CSI and RTC. (Plaintiff's Opposition at 13.) The decision was a fact-specific
23 determination. CSC was the former "mother church" of the Scientology religion. CSI replaced it, and
24 allegedly succeeded to certain of its functions and income. The decision was limited by its nature to the
25 alleged virtual dissolution of CSC and its purported replacement by CSI. The California Superior Court
26 had no evidence before it concerning the Nevada Churches, which are mere local churches. The decision
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therefore is inapplicable here.⁶

IV. THIS COURT SHOULD REJECT ARMSTRONG'S EFFORTS TO CIRCUMVENT THE JURISDICTION OF THE CALIFORNIA SUPERIOR COURT WHICH HELD ARMSTRONG IN CONTEMPT

As more fully set forth in CSI's Memorandum of Points and Authorities, after Armstrong repeatedly violated the terms of a settlement agreement, the California Superior Court for the County of Marin in *Church of Scientology International v. Armstrong*, Case No. 152229, entered a permanent injunction barring Armstrong from further breaches of the agreement. Subsequently, the court twice held Armstrong in criminal contempt for his repeated breaches of the Injunction, ordering Armstrong to serve a total of 28 days in jail and to pay a total of \$3,600 in fines. After entry of the first order of contempt, Armstrong fled California and he remains a fugitive. In addition to the bench warrant previously issued, that Court has now issued a second bench warrant for Armstrong's arrest. Reply Declaration of Michael Rinder, ¶ 23 and Exhibit B.

Armstrong's attempt to now come to this Court, in an effort to avoid justice in California, is obscene. The very notion that a federal court would afford a litigant such as Armstrong a forum to assert his claims while he is a fugitive from justice in California is bizarre. Indeed, were Armstrong to set foot in this Court — for deposition or trial as the plaintiff here — the Nevada authorities would surely arrest him on California's request for extradition. In these circumstances, this Court ought not permit itself to be party to Armstrong's tactics, let alone afford him the right to use its courthouse as a safe house to continue as a fugitive. The Declaration of Armstrong's counsel, seeking excuse for the late filing of his opposition to defendants' motions to dismiss, demonstrates that Armstrong's purpose is to collaterally attack the Superior Court's order. After quoting a letter from CSI's counsel advising Armstrong's counsel that Armstrong must comply with the Superior Court's order, the declaration states, "The base already laid in this federal court, it is hoped, will result at the end of litigation in a strong decision determining the absolute wrongness [of the quotation]." (Attorney George Abbott declaration II for Showing of Excusable Neglect, ¶ 7, at 5). Armstrong's appeal from the Superior Court's order was rejected because he had not discharged his

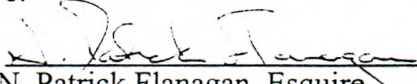
⁶The lower court decision in California has no collateral estoppel effect, both because it raises different factual and legal issues and because it is on appeal. A California judgment does not have collateral estoppel effect during the pendency of an appeal. *National Union Fire Ins. v. Stites*, 235 Cal. App.3d 1718, 1726, 1 Cal.Rptr.2d 570, 574 (Cal. App.2 Dist. 1991). See also 7 Witkin, *California Procedure* (4th ed. 1997), Judgment § 307 ("while an appeal is pending . . . the judgment is not conclusive [for res judicata purposes]").

1 contempt of the Superior Court. This Court should not countenance his efforts to seek an alternate
2 jurisdiction in which to circumvent or collaterally attack the California Superior Court's order.

3 **CONCLUSION**

4 For the foregoing reasons, CSI respectfully requests that the motion for dismissal of this
5 action be GRANTED.

6 DATED this 26th day of June, 1998.

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Hale, Lane, Peek, Dennison, Howard, Anderson and Pearl
100 West Liberty Street, 10th Floor
Reno, Nevada 89501

PROOF OF SERVICE BY MAIL

I, Sylvia Baldemor, declare:

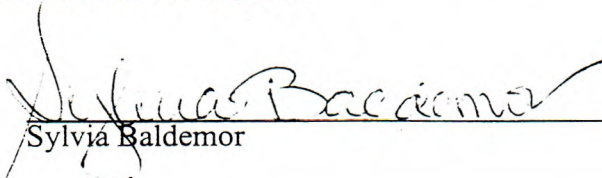
I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Hale, Lane, Peek, Dennison, Howard, Anderson and Pearl. My business address is 100 W. Liberty Street, Tenth Floor, Reno, Nevada 89501. I am over the age of 18 years and not a party to this action.

I am readily familiar with Hale, Lane, Peek, Dennison, Howard, Anderson and Pearl's practice for collection and processing of its outgoing mail with the United States Postal Service. Such practice in the ordinary course of business provides for the deposit of all outgoing mail with the United States Postal Service on the same day it is collected and processed for mailing.

On June 26, 1998, I served the foregoing **REPLY MEMORANDUM OF POINTS AND AUTHORITIES OF DEFENDANT CHURCH OF SCIENTOLOGY INTERNATIONAL IN SUPPORT OF MOTION TO DISMISS COMPLAINT** by placing a true copy thereof in Hale, Lane, Peek, Dennison, Howard, Anderson and Pearl's outgoing mail in a sealed envelope, addressed as follows:

George W. Abbott, Esquire
2245-B Meridian Boulevard
P.O. Box 98
Minden, NV 89423

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on June 26, 1998.


Sylvia Baldemor